(3)

No. 86-715

In The
Supreme Court of the United States
October Term, 1986

IN RE FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION

SUBCLASS IV (Unitholders),

Petitioner,

vs.

FOX AND COMPANY, REAVIS & MCGRATH, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

DANIEL W. KRASNER
JEFFREY G. SMITH
WOLF HALDENSTEIN
ADLER FREEMAN
& HERZ
270 Madison Avenue
New York, NY 10016
(212) 689-5300

LOWELL E. SACHNOFF*
CHARLES R. WATKINS*
LUCY J. KARL
SACHNOFF WEAVER
& RUBENSTEIN, LTD.
30 South Wacker Drive
Suite 2900
Chicago, IL 60606
(312) 207-1000

Attorneys for Respondents
Subclasses I, II, III and V

*Counsel of Record

(List of Counsel Continues on Inside Front Cover)

Pandick Technologies, Inc., Chicago • (312) 236-0200

5311

JACK L. CHESTNUT
CHESTNUT & BROOKS, P.A.
900 Midland Bank Building
Minneapolis, MN 55402
(612) 339-7300

JOHN COCHRANE
COCHRANE & BRESNAHAN
24 East Fourth St.
St. Paul, MN 55101
(612) 298-1950

THOMAS P. GALLAGHER
4717 IDS Center
Minneapolis, MN 55402
(612) 330-3020

THOMAS C. BARTSH
510 Lumber Exchange Place
Minneapolis, MN 55402
(612) 339-0411

Receiver, Pro Se

QUESTIONS PRESENTED FOR REVIEW

The questions presented in the Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit (the "Petition") are not worthy of review by this Court. The decision of the Court of Appeals for the Eighth Circuit in this case is fully consistent with the decisions of this Court and will have no appreciable impact on class action litigation. Contrary to the assertions in the Petition, no "important questions of federal civil procedure in approving class action settlements" are raised by the Eighth Circuit's opinion. Rather, the case was decided in accordance with this Court's ruling in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) and *Evans v. Jeff D.*,___U.S.___, 106 S. Ct. 1531, 89 L.Ed.2d 747 (1986). Consequently, further review is unwarranted.

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STATEMENT OF THE CASE

Respondents Subclasses I, II, III and V and the Receiver substantially concur with Petitioner's statement of the case as far as it goes. However, that Statement does not present the Court with all of the relevant facts.

This case began in 1982 when the Securities and Exchange Commission ("SEC") uncovered a massive fraud in connection with Flight Transportation Corporation ("FTC"), a Minneapolis based air transportation company.

FTC had sold over $30 million dollars in securities in four public offerings in the three years prior to discovery that the company was, essentially, a sham. A Receiver was appointed and numerous private lawsuits followed, including this massive securities fraud litigation.

Under a court approved "Sharing Agreement" in 1983, a class of defrauded FTC securities purchasers (subclassed to account for purchasers of the four FTC offerings and in the open market), the Receiver of FTC, and FTC's defrauded creditors resolved certain differences among themselves and combined their forces to prosecute all of their claims for recovery under the direction of the class Plaintiffs' Steering Committee. With several bumps and detours along the way, recovery of over $50 million in losses was accomplished by a series of interrelated settlements with various defendants, culminating with a group of settlements in late 1985 (the "Settlements"), only two of which are the subject of the Petition.

But for this appeal, the $50 million settlement fund, after costs and fees still to be determined by the district court, would have been distributed to the defrauded securities purchasers and other creditors of FTC sooner than 4 years after the frauds were uncovered. The recoveries represent in excess of 90% of the public losses. Petitioner, Subclass IV, including Harris Trust and Savings Bank ("Harris Trust"), which filed a Supplemental Brief in Support of the Petition ("Supplemental Brief"), has already received $11 million from the settlement fund, or approximately 75% of its losses.

Subclass IV objected to and appealed from the Settlements because of certain indemnification provisions. Two of the Settlements, one with Reavis & McGrath ("Reavis"), FTC's underwriters' counsel, and one with Fox and Company ("Fox"), FTC's auditors, contained indemnifications broader than the usual "judgment reduction" indemnification. The indemnification contained in

the Reavis Settlement is limited to the amount Reavis has contributed to the settlement fund, but is not limited to claims-over of non-settling defendants. The indemnification contained in the Fox Settlement is not limited in amount or to claims-over.

The Settlements and the indemnifications were not entered into or approved in a vacuum, as the Petition and the Supplemental Brief would have it, but were the result of extremely thorough and careful investigations. This case, now almost five years old, has been thoroughly aired from every conceivable angle. First, by the SEC which closed down the fraudulent FTC operation and secured appointment of a Receiver in 1982. Then by class counsel who, with the assistance of the Receiver, prosecuted the civil actions against FTC, its officers, directors, D & O liability carrier, attorneys, attorneys' insurers, accountants, underwriters, underwriters' attorneys, aircraft hull insurance carrier and major lenders. The Receiver, who was also the debtor-in-possession, vigorously explored virtually every nook and cranny of FTC's operations, legitimate and illegitimate, and tracked down all claims and assets of FTC, both inside and outside of the United States. The United States Attorney in Minnesota prosecuted criminal actions against FTC's president, chief financial officer, head accountant, and primary outside attorney, all of whom are now in prison. Further, some of FTC's outside directors and others prosecuted their own actions against FTC, its principals, and banks which honored forged checks. Finally, the Settlements, like all of the settlements herein, were closely supervised by the district court and provided that the settling defendants assign to the plaintiffs all claims, known or unknown, which the settling defendants possessed or might possess relating to FTC, except for a few small claims which were carved out of the indemnification provisions.

Thus, when the Settlements were approved, the plaintiffs and their counsel, as well as the district court, were

well aware of the universe of potential claims which might give rise to actions under the indemnifications. Indeed, they "controlled" almost all of those potential claims. Both plaintiffs' counsel and the FTC Receiver determined the risk of the indemnifications to be de minimus and worth taking in light of the approximately $15 million added to the settlement fund by the Settlements (over $7 million by the two which are the subject of the Petition) and the fact that Fox was the last major defendant in the case. The district court and circuit court agreed from both a factual and legal standpoint and found the risks of the indemnifications "remote."

Following the Eighth Circuit's decision upholding the Settlements, counsel for the class, the Receiver, and counsel for Subclass IV continued negotiations to resolve the issues in the Petition. In November of 1986, an agreement was reached (the "Agreement," set forth in the Appendix at 1a ("App. at ___ ")). The Agreement was approved by the district court after notice to all concerned parties and a hearing on December 16, 1986. App. at 14a.

The Agreement leaves the challenged indemnifications intact, reduces the amount of the settlement fund to be distributed to Subclass IV by $500,000 which would remain in the settlement fund as that subclass's contribution to class plaintiffs' attorneys' fees as and when approved by the district court, sets guidelines for applications for counsel fees, provides for prompt distribution to all subclasses of their shares of the recoveries, and provides for withdrawal of the Petition following final approval of the Agreement. Two extensions of time on the briefing of the Petition were sought and granted to allow the Agreement to become effective and the Petition to be withdrawn.

Harris Trust, however, objected to the Agreement, solely because of its contemplated withdrawal of the Petition. On January 14, 1987, Harris Trust filed a Notice of Appeal to the Eighth Circuit. App. at 16a. On February

12, 1987, Harris Trust filed the Supplemental Brief.

With respect to Subclass IV's "due process" notice argument, respondents note that Subclass IV never challenged the sufficiency of the May 31, 1983, class certification notice below. Nor did it challenge the sufficiency of the notices of the Reavis and Fox Settlements, which are not even discussed in the Petition or Supplemental Brief. No wonder: both of those notices specifically advised class members of the indemnification provisions.

The Reavis Settlement notice stated:

> 3. Reavis & McGrath, its partners, associates and agents, past and present, will be indemnified with respect to judgments against them by parties to this action subject to the terms and conditions more fully set forth in the Settlement Agreement.

App. at 19a.

The Fox Settlement notice stated:

> 3. Fox, its partners, employees and agents, past, present, and future, will be indemnified with respect to claims against them by any person arising out of or relating to any transaction or occurrence involving FTC and Fox as more fully set forth in the Settlement Agreement.

App. at 23a.

Both notices set forth the date and time of the hearing for final approval of the proposed Settlements and advised class members of their right to appear and show cause why the Settlements should not be approved. The district court also allowed objecting class members to opt out of the class if they so chose.

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The decision of the Eighth Circuit involves no conflict with any decision of this Court. The decision to approve the Settlements, which end massive and complex securities fraud litigation and enable defrauded claimants to recover almost unprecedented percentages of their losses, is clearly correct. The issues before this Court have been fully considered by the district court and the Eighth Circuit. Further review is unwarranted.

SUMMARY

The district court, in approving the Settlements, found them to be "fair, reasonable and adequate". In discussing the portions of the Settlements requiring plaintiffs to defend and indemnify the settling defendants, the district court found that in light of all that is known about this case the probability that the provisions would be invoked was "remote". The Eighth Circuit affirmed the district court's decision, concluding that the district court's "finding that the risk to which the indemnity provisions expose Subclass IV . . . is tolerable, is not clearly erroneous, and we therefore accept it." The controversy between Petitioner and Respondents has subsequently been resolved. Harris Trust, which filed the Supplemental Brief, seeks only delay.

I. This Controversy Has Been Effectively Resolved

As stated in Petitioner's Supplemental Reply Brief to the Supplemental Brief of Harris Trust and Savings Bank and as demonstrated in the Agreement, App. at 1a, the substance of the dispute which gave rise to the appeal below and this Petition has been resolved. No real dispute between Petitioners and Respondents is presented to this Court. Only Harris Trust continues to support the Petition and informally requests leave to intervene in the Petition, take over the Petition, or submit a substitute Petition.

Only Harris Trust desires to keep this controversy alive. All other members of the Class, including Subclass IV (which consists of 52 other institutional investors), want this dispute to end now on the terms of the Agreement so that distribution of recoveries can begin.

Harris Trust's true fear is set forth on page 3 of its Supplemental Brief. It states that even though it "does not have a personal, financial interest in the FTC" settlement fund, but is "interest[ed] solely as Trustee of" several trusts which purchased FTC securities, it "may be required to indemnify" Fox or Reavis although it "received no benefit" and may be "unable to obtain reimbursement from" its trust beneficiaries. In short, Harris Trust fears the potential risk (which two reviewing courts have characterized as "remote") to which it voluntarily subjected itself by acting as a nominee class member for the trusts it manages.

Due to those fears, Harris Trust now seeks to delay the conclusion of this case and the distribution of the class recovery. By supporting the Petition and pursuing an identical appeal in the Eighth Circuit,[1] Harris Trust presumably intends for its delaying tactics to last until all statutes of limitation have run or until the Agreement is terminated by virtue of a self-destruct provision which requires final approval by April 30, 1987. App. at 30a. Harris Trust hopes that it will not have to distribute any additional recoveries to the trusts on whose behalf it is acting until all unknown claims have expired.

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[1] Harris Trust's Eighth Circuit Appellant's Form A, noting the issues for appeal, was filed on February 11, 1987, the day before its Supplemental Brief. App. at 25a. Harris Trust filed its motion to stay its appeal to the Eighth Circuit on March 16, 1987. App. at 27a. An order denying that motion was entered on March 19, 1987. App. at 29a. Respondents here, appellees in Harris Trust's Eighth Circuit appeal, have moved to dismiss that appeal as frivolous, already decided under the law of the case doctrine, and as subsumed in the relief Harris Trust seeks here.

This Court should dismiss this Petition promptly, as lacking true controversy and unworthy of a writ of certiorari. This Court should permit this lengthy securities fraud litigation to end and the defrauded claimants to recover their funds. Despite Harris Trust's fears, no significant issue is raised.

II. Even If This Controversy Had Not Already Been Resolved, The Petition Should Be Denied

A. The Opinion Of The Eighth Circuit Is Consistent With The Opinions Of This Court

The courts below, in approving the Settlements with Reavis and Fox, did not coerce any class member to accept the Settlements or deny any class member due process. The Petition's argument is two-fold. First, it raises a new argument that Subclass IV was denied due process because the May 31, 1983, notice of class certification (entered early in the case) did not advise that future settlements with various defendants could contain indemnity provisions.[2] Second, the Petition argues that the "settle or try the case" choice which Subclass IV faced below, as proposed by the district court, was no option at all, but rather a "coercive tactic" designed to force Subclass IV to accept the Settlements. Neither of these arguments is tenable.

Contrary to the Petition's claim, the courts below did not disregard this Court's holding in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), in approving the Settlements. In point of fact, the district court adhered strictly to the due process requirements of *Shutts*.

In *Shutts*, this Court addressed whether a state court

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[2] Subclass IV did not raise the notice argument below, but merely argued that *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), prevented approval of indemnifications like those in the Fox and Reavis Settlements.

could exercise jurisdiction over out-of-state, absent class members who, but for the class action device, would not fall within the court's jurisdiction. This Court held that, since the "downside" risks of counterclaims, cross-claims, fee and cost liabilities, or damages on an adverse judgment, "almost never" or "typically" do not occur, 472 U.S. at 810, then, as long as due process protections are satisfied, a state court may exercise jurisdiction over absent class members not otherwise amenable to that court's power. *Id.* at 811. Due process protections require only that absent class members be afforded: 1) notice of the action, 2) an opportunity to appear, 3) an opportunity to opt out, and 4) adequate representation. *Id.* at 812.

Here, a major concern of *Shutts* is lacking entirely. There is no question that the federal district court has jurisdiction over all of the absent class members even without the class action device. The case arises under the federal securities laws, where nationwide jurisdiction exists. *See* 15 U.S.C. §§77v, 78aa; *Haas v. Wieboldt Stores, Inc.*, 725 F.2d 71, 73 (7th Cir. 1984). The federal court is clearly the proper forum and its rulings are binding upon all class members without ever raising the central jurisdictional issue which concerned this Court in *Shutts*.

Nor can Subclass IV claim under *Shutts* that it was entitled to any different notice than it received. The Petition raises for the first time the claim that the 1983 notice of class certification was defective because it did not inform the class that future settlements with the defendants could contain indemnification provisions. By failing to raise this issue with the district court or the Eighth Circuit, however, Subclass IV waived its right to pursue this claim before this Court. *See e.g., Strahan v. Pedroni*, 387 F.2d 730, 732 (5th Cir. 1967). Further, even if not waived, this argument lacks merit. Failure of the class certification notice to advise class members of the remote possibility that future settlement agreements might contain unusual indemnity provisions did not prejudice Subclass IV or any other class

member.

First, the notices of Settlement sent to all class members specifically regarding the Fox and Reavis Settlements alerted the class to the indemnification provisions as well as the other terms of the Settlements and the date set for hearing on the Settlements. The notices specifically provided that any class member objecting to the Settlements could appear at the hearing and show cause why the Settlements should not be approved. Indeed, counsel for Subclass IV appeared, sought the benefits of the Settlements, sought to retain all the benefits of the prior related settlements, but objected to the indemnification provisions.

Second, the district court, after entertaining Subclass IV's objections in full, analyzed the indemnifications in detail, concluded that the objections were without merit and approved the Settlements. However, even as it did this, the district court gave Subclass IV and other objectors present the opportunity to opt out of the class and proceed to trial. Thus, in addition to subjecting the indemnification provisions to careful analysis, the district court provided Subclass IV with every due process protection mandated by *Shutts*: notice, the opportunity to appear, the opportunity to opt out and adequate representation. The Eighth Circuit similarly analyzed the indemnifications and the procedures leading to their approval, as well as the objections, and affirmed the district court.[3]

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[3] The Petition claims that the Eighth Circuit's decision will have a substantial adverse impact upon class actions because the initial notice of class certification in future class actions would have to "disclose clearly to potential class members that if they do not opt out they may be placing their own assets in jeopardy". Petition at 15-16. This is unnecessary. The use of other than judgment reduction indemnity provisions is not common. Moreover, the class representatives would never

(Footnote continued on the following page)

The choice the district court presented to Subclass IV of accepting the Settlements or proceeding to trial did not impose "onerous and coercive conditions" upon it. Denial of that choice might have been coercive. However, instead of requiring Subclass IV to be bound by all of the Settlements despite its objections, the court reminded Subclass IV that it could opt out of the class and not be bound at all. That this would require Subclass IV to return disbursements to which it was not entitle if it was not a member of the class is not coercive, it is a matter of equity and common sense.

Reliance upon *Evans v. Jeff D.*, ___ U.S. ___ 106 S.Ct. 1531, 89 L.Ed.2d 747 (1986), to establish that the district court acted coercively is also misplaced. The Eighth Circuit's approval of the Settlements in no way conflicts with *Evans*. The passage quoted by Subclass IV demonstrates this: "the power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed." 89 L.Ed.2d at 757. The district court explicitly did not require Subclass IV to accept the Settlements, but afforded it the opportunity to opt out of the class so that it would not be forced to enter into settlements with which it did not agree. This is entirely in keeping with *Evans*. Indeed, in submissions to the district court Subclass IV and the other objectors specifically requested the opportunity to opt out rather than accept the indemnifications.[4]

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3 *(Continued)*

agree to such a provision nor would a district court approve such a provision, unless the likelihood that it would be triggered is minimal. Where an indemnification provision is negotiated as part of a settlement, notice to the class members of the indemnification via the notice of settlement coupled with the opportunity to be heard, adequate representation and the opportunity to opt out is sufficient.

[4] The Petition's reliance upon *United States v. Swift*, 286 U.S.

(Footnote continued on the following page)

Neither *Shutts* nor *Evans* supports the contention that the lower courts acted coercively or in excess of their powers. As there is no departure from established precedent warranting this Court's review, the Petition should be denied.

B. The Risks Presented By The Indemnification Provisions Are Remote

The history of this case demonstrates that the risks presented by the indemnification provisions are truly minimal. In October 1985, the district court, fully familiar with the facts of this case, carefully evaluated these risks and concluded they were "remote". Thereafter, the Eighth Circuit examined the issue and agreed with the district court's analysis that the risk to the class members presented by the indemnification provisions "is tolerable, is not clearly erroneous."

Since the district court's approval of the Settlements in October, 1985, some 18 months have passed. Not one case has been filed in that time period. Neither Petitioner nor Harris Trust has yet identified any real or hypothetical claim which could activate the indemnification provisions. Indeed, the last complaint arising from the FTC debacle was the class complaint against Alexander & Alexander, filed in December, 1984, by the Plaintiffs Steering Committee. Moreover, all of the settling defen-

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4 *(Continued)*

106 (1931), is puzzling. In *Swift*, defendants sought modification of a consent decree restraining trade which they had voluntarily entered into several years earlier. This Court held that modification of the decree was improper as there was no showing of a "grievous wrong evoked by new and unforeseen conditions" so as to justify modification. *Id.* at 119-20. The decision at bar is not even remotely in conflict with *Swift*. The issue here is not whether a consent decree should be modified. Rather it is whether the indemnifications in the settlements were proper and whether petitioner was afforded due process.

dants have assigned their claims to the class plaintiffs or have carved them out of the indemnification provisions. Thus, the filing of any additional, unknown claims is, as the lower courts recognized, simply too remote and conjectural to impair the propriety of the Settlements' approval.

This is a case where the class members will receive an almost unprecedented recovery. The benefits accruing from settlements where class members are likely to recover more than 90 cents on the dollar far outweigh the nonexistent risk that an indemnification provision could be invoked. Put simply, acceptance of the minute risk inherent in the indemnification provisions in this case was necessary in order to achieve such a substantial recovery.

APPENDIX

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master Docket No. 4-82-874 M.D.L. No. 517 Honorable Charles R. Weiner

AMENDMENT TO THE SHARING AGREEMENT CONCERNING SUBCLASS IV BY AND AMONG THE CLAIMANTS

This Amendment to the Sharing Agreement ("Amendment") is entered into on the date set forth below, by and among the parties thereto, being the five Subclasses, through their attorneys; certain Participating Creditors, through their attorneys; and the Receiver. This document amends the Sharing Agreement dated April 15, 1983 (previously approved by order of the Court) by and among the parties hereto only to the extent set forth herein and the parties hereto reconfirm all other terms of the Sharing Agreement.

WHEREAS, the parties hereto entered into the Sharing Agreement in order to provide, among other matters, for allocation of Total Recoveries and for the common prosecution of all claims of the various Claimants;

WHEREAS, the Plaintiff Steering Committee has prosecuted such claims and added in excess of $20,000,000 to the Total Recoveries over the amount originally in the Escrow Fund;

WHEREAS Subclass IV has objected to indemnity provisions in certain settlement agreements, such objections were overruled by the District Court, said ruling

was upheld by the United States Court of Appeals for the Eighth Circuit, and Subclass IV has petitioned the United States Supreme Court for a Writ of Certiorari;

WHEREAS, subject to the conditions set forth herein, Subclass IV is willing to agree to a reduction of $500,000 in the amount of its remaining Allocation under the Sharing Agreement in order to expedite the payment of amounts due to the Subclass thereunder, to provide for payment of attorneys fees and expenses to the representatives of Subclass IV and to recognize the contribution of the Plaintiff Steering Committee;

WHEREAS, the other Subclasses, the Participating Creditors and the Receiver are willing to expedite the allocation of such funds and payment of interest thereon from Total Recoveries, subject to the terms and conditions set forth herein;

WHEREAS, the parties hereto are willing to agree as to the source for payment of attorneys fees for counsel for the various Subclasses;

WHEREAS, the parties hereto wish to avoid incurring additional attorneys fees, expenses and delays regarding such matters;

WHEREAS, by Pretrial Orders ____, 272, and 273, the Court has approved Principal Allowed Claims for members of Subclass IV totalling $14,597,458;

WHEREAS, pursuant to Pretrial Orders dated July 19, 1984 and January 21, 1985, the Court approved a first Allocation of $11,000,000 from the Escrow Fund to Subclass IV and distribution of that Allocation to members of Subclass IV; and

WHEREAS, pursuant to paragraph 0 of the Sharing Agreement, Subclass IV is entitled to an additional Allocation of $2,867,585 in order to bring amounts allocated to Subclass IV to the 95% of Principal Allowed Claims, as provided for in the Sharing Agreement (the

"Additional Allocation").

THEREFORE, IT IS AGREED AMONG THE PARTIES HERETO:

1. Subject to all of the provisions hereof, Subclass IV agrees to reduce its claim for the Additional Allocation by $500,000 to the principal amount of $2,367,585. In addition to the principal amount of $2,367,585 such Allocation shall include a pro-rata share of interest earned on funds held by the Receiver from the date of this Amendment including interest on the allocation provided for in paragraph 5 below (this Allocation including interest shall be referred to as the "Modified Allocation"). The Modified Allocation shall be made to Subclass IV not later than five days after the latter of: (a) the date of Final Approval (as hereinafter defined) of this Amendment; or (b) dismissal of the Petition for Writ of Certiorari.

2. If the Court shall award attorneys fees and disbursements to counsel for the other Subclasses less then $3,000,000, then a proportionate amount of the $500,000 referred to above shall be reallocated to Subclass IV.

3. Counsel for Subclass IV, upon Final Approval shall request dismissal with prejudice of its Petition for Writ of Certiorari to the United States Supreme Court.

4. Attorneys fees and expenses for Best & Flanagan, Ropes & Gray, and Cole & Dietz, (counsel for the representatives of Subclass IV as designated in paragraph B(1) of the Sharing Agreement), shall be paid, as allowed by the Court, out of the Modified Allocation. All parties to this Amendment agree that the attorneys' fees and expenses heretofore requested in petitions filed by these law firms are reasonable in nature and amount, that they will recommend that such petitions be allowed as submitted, and that they shall not oppose any such petitions. No other attorneys fees or expenses, of any kind, shall be charged to or paid out of the Modified Allocation of Subclass IV.

5. If the Agreement attached hereto as Exhibit A

shall receive final approval by the Court, Liberty Service shall become member of Subclass IV with a Principal Allowed Claim in the amount of $490,000 and shall be treated in the same manner as other members of the Subclass IV provided that an additional Allocation of $465,500, shall be added to the Modified Allocation not later than five days after the date of Final Approval. Such actions shall permit Liberty Service to participate as a member of Subclass IV without discrimination of the rights of other members of Subclass IV.

6. Immediately upon execution of this Amendment, the parties hereto shall jointly apply to the District Court for preliminary approval thereof, and, in connection with said application, to submit the proposed order attached hereto as Exhibit B. In the event such order is not entered by November 30, 1986, this Amendment shall be null, void and of no further force or affect. In the event that this Amendment does not receive Final approval by the District Court as fair, reasonable and adequate, after hearing on notice to members of Subclass IV, on or before February 28, 1987, this Amendment shall be null, void and of no further force or effect. "Final Approval" of the this Amendment shall mean the thirty-first (31) day after the entry of an order by the District Court approving all of the terms and conditions of this Amendment if no appeal is taken therefrom and, if an appeal is taken therefrom, the first day after resolution of said appeal when no further appeals or petitions for certiorari or other appellate proceedings may be filed.

7. The Modified Allocation, after payment or reservation of sums required to pay attorneys' fees and expenses as set forth in Section 4 hereof, shall be distributed to members of Subclass IV within thirty (30) days of Final Approval, subject to such assurance, if any, that Subclass IV representatives may require for an effective sharing of the Subclass' exposure under the indemnity provisions which are the subject of the Petition for Writ of Certiorari

described above.

AGREED AND STIPULATED THIS 14th DAY OF NOVEMBER, 1986.

SUBCLASSES I, II, III, and V:
(Plaintiffs Steering Committee)

By: /S/ JACK L. CHESTNUT
JACK L. CHESTNUT

By: /S/ JOHN A. COCHRANE
JOHN A. COCHRANE

By: /S/ LOWELL E. SACHNOFF
LOWELL E. SACHNOFF

By: /S/ THOMAS P. GALLAGHER
THOMAS P. GALLAGHER

By: /S/ DANIEL W. KRASNER
DANIEL W. KRASNER

On behalf of the parties represented by them in the CONSOLIDATED ACTION

RECEIVER:

By: _____
THOMAS C. BARTSH

PARTICIPATING CREDITORS:

By: /S/ EDWARD J. CALLAHAN
EDWARD J. CALLAHAN
Counsel for Greyhound Leasing and Financing Corporation

By: /S/ JAMES R. SAFLEY
JAMES R. SAFLEY
HOWARD A. PATRICK

SUBCLASS IV:

By: /S/ JAMES C. DIRACLES
James C. Diracles
Counsel for Subclass IV

By: /S/ WILLIAM F. MCCARTHY
William F. McCarthy
On behalf of Putnam High Yield Trust

COLE & DIETZ

By: /S/ ALBERT D. JORDAN
Albert D. Jordan
On behalf of United High Income Fund, Inc., and
Oppenheimer High Yield Fund

EXHIBIT A

UNITED STATES DISTRICT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master Docket No. 4-82-874 M.D.L. No. 517 Honorable Charles R. Weiner

STIPULATION AND ORDER

WHEREAS, Liberty Service Corporation ("Liberty") purchased $900,000 face amount of Flight Transportation Corporation 11-1/4% sinking fund debentures from the original purchasers thereof on February 11, 1983, along with an assignment of all claims of the original purchasers against Flight Transportation Corporation ("FTC"); and

WHEREAS, CSL Realty Advisers, Inc. ("CSL") acquired those debentures from Liberty on or about November 1, 1984, and is the present owner thereof; and

WHEREAS, Manufacturers Hanover Trust Company, as indenture trustee (the "Indenture Trustee"), has filed a proof of claim on behalf of all holders of such debentures in the bankruptcy proceedings of FTC, and such claim has been reduced to the amount of $990,000, based largely on the debentures owned by CSL; and

WHEREAS, the Indenture Trustee has filed an appeal from the Bankruptcy Court's approval of the Plan of Reorganization of FTC on the ground that such Plan does not properly provide for the claims of the debenture holders according to law; and

WHEREAS, Thomas C. Bartsh, Receiver/Debtor in Possession (the "Receiver"), has filed a motion to have

all claims of Liberty classified in Subclass IV in this litigation and therefore disqualified from allowance in the bankruptcy proceedings and from participation in any distribution from the bankruptcy estate other than as a member of Subclass IV and by virtue of the allocation to Subclass IV under the Sharing Agreement approved by the Court on July 15, 1983; and

WHEREAS, in March 1986, Liberty sent to Subclass IV plaintiffs' counsel for filing a proof of claim in the asserted amount of $900,000; and

WHEREAS, such proof of claim was not filed within the time allowed for filing Subclass IV proofs of claim in these actions, but Liberty contends that it did not have timely notice of the requirement to file such a claim, that its failure to file such claim timely was a result of excusable neglect, and that justice requires the allowance of its claim; and

WHEREAS, the parties hereto have concluded that litigation of the issues posed by these facts would be time-consuming and expensive and would unduly delay the course of these actions and the bankruptcy proceedings, and that the outcome of such litigation is in doubt; and

WHEREAS, the Receiver and certain other parties expect to enter into an agreement, subject to Court approval, settling various controversies regarding Subclass IV claims, which agreement will be premised upon the resolution of the issues covered by this Stipulation and Order as provided herein;

NOW, THEREFORE, the parties hereto, subject to the approval of the Court, agree as follows:

1. The Motion of the Receiver for an order determining that Liberty is a member of Subclass IV shall be granted.

2. Liberty's failure to file its claim as a member of Subclass IV on a timely basis was the result of excusable

neglect which should be excused in the interest of justice, and Liberty's Subclass IV claim shall be allowed in the amount of $490,000, as set forth on the Proof of Claim attached hereto, in full satisfaction of all claims of Liberty and CSL against FTC, the Receiver, and the Escrow Fund.

3. Liberty and CSL will direct Manufacturer's Hanover Trust Company to deliver the $900,000 face amount of debentures to the Receiver for cancellation.

4. This Stipulation and Order is contingent upon and shall be entered only upon the District Court's tentative approval on or before November 30, 1986, of the above-mentioned agreement relating to Subclass IV claims for submission to class members.

ON BEHALF OF
CLAIMANTS' COMMITTEE:

RECEIVER:

/S/ THOMAS BARTSH
By:_____
Thomas Bartsh

PLAINTIFFS' STEERING
COMMITTEE

By:_____

ROBINS, ZELLE, LARSON
& KAPLAN

By:_____

GRAY, PLANT, MOOTY,
MOOTY & BENNETT

By:_____

BEST & FLANAGAN and
ROPE & GRAY

By:_____
James Diracles

ON BEHALF OF LIBERTY SERV
CORPORATION and CSL REALT
ADVISORS, INC.:

HANGLEY CONNOLLY EPSTEI
CHICCO FOXMAN & EWING

By:_____
Mark A. Aroachick
William H. Ewing

Approved and so ordered
this ____ day of ____, 1986:

_____
Charles R. Weiner, J.

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master File No. 4-82-874 M.D.L. No. 517

PRETRIAL ORDER NO.

WHEREAS, the Court has been advised of an Amendment to the Sharing Agreement ("Amendment") entered into by certain Claimants and the Receiver, as defined in the Sharing Agreement; and

WHEREAS, the Amendment has been executed by counsel for the above named parties and lodged with the Court;

The Court, having duly considered the Amendment, hereby preliminarily approves the terms of such Amendment and Orders as follows:

1. A hearing shall be held before the undersigned at ____ a.m. on ___, 1986, in the United States Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purpose of determining whether the proposed Amendment to the Sharing Agreement is fair, reasonable and adequate and should be approved by the Court.

2. Counsel for representatives of Subclass IV (Best & Flanagan, Ropes & Gray and Cole & Dietz), as designated in paragraph B(2) of the Sharing Agreement, have heretofore submitted petitions for the payment of fees and expenses. On or before _____, 1986 such counsel shall submit to the Court additional petitions, if

any, for attorney's fees and expenses subsequent to the period served by such prior petitions. At the hearing to be held pursuant to the preceding paragraph hereof, the Court will also consider allowance of such petitions for payment of attorney's fees and expenses, which shall be paid out of the Modified Allocation in the event that the Amendment is approved.

3. Pursuant to Rule 23(e), Fed. R. Civ. P., counsel for Subclass IV shall give notice to each member of Subclass IV of such hearing, the proposed Amendment of the Sharing Agreement, and the approximate amount of the total application for attorneys fees and expenses sought to be paid out of the Modified Allocation. Such notice, in the form to be approved by the Court, shall be sent by first class mail in a postage prepaid envelope addressed to each subclass member at the address shown on their respective proofs of claim.

4. Any member of the Subclass who objects to the approval of the proposed Amendment may appear at the hearing and show cause, if any he has, why it should not be approved as fair, reasonable and adequate. However, any objection must initially be made in writing and filed with the Court, postmarked no later than _____, 1986, showing thereon delivery of a copy of such written objection to Best & Flanagan, 3500 IDS Center, Minneapolis, Minnesota 55402, attorneys for Subclass IV, and Jack L. Chestnut, Chestnut & Brooks, P.A., 900 Norwest Midland Bank Building, Minneapolis, Minnesota 55401, Chairman of the Plaintiffs Steering Committee.

5. No member of the Subclass shall be entitled in any way to contest the approval of the terms and conditions of the proposed Amendment unless he has served and filed written objections in accordance with paragraph 5 above, and any member of the Subclass who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any such objections

except upon permission of the Court for good cause shown.

6. Notice given in accordance with paragraph 4 above shall constitute due and sufficient notice to all persons entitled thereto under Rule 23(c)(2) of the Federal Rules of Civil Procedure and is determined to be the best notice practicable under the circumstances.

The Honorable Charles R. Weiner
United States District Judge

Dated: November ____, 1986.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE:
FLIGHT TRANSPORTATION
CORPORATION SECURITIES
LITIGATION

Master Docket
No. 4-82-874
M.D.L. 517

PRETRIAL ORDER NO. 280

ORDER AND JUGDMENT APPROVING AN AMENDMENT TO THE SHARING AGREEMENT CONCERNING SUBCLASS IV BY AND AMONG THE CLAIMANTS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 23 AND 54 (b)

The terms used herein shall have the same meanings as set forth in the Sharing Agreement dated April 15, 1983. Pursuant to Pretrial Order No. 275, and Amendment to the Sharing Agreement Concerning Subclass IV by and among the Claimants (the "Amendment") was preliminarily approved by the Court and notice summarizing the terms of the Amendment was mailed to each member of Subclass IV.

Upon thorough consideration of the Amendment, all documents submitted in support thereof, and having given due consideration to the objection of Harris Trust to the Amendment, the Court finds that the Amendment to the Sharing Agreement is fair, adequate and reasonable.

FILED 12-19-86

JUDGMENT ENTERED _____

THEREFORE, IT IS ORDERED THAT:

(1) The Sharing Agreement dated April 15, 1983 is hereby modified to the extent set forth in the Amendment;

(2) The Receiver is authorized to enter into the Amendment and effectuate its terms including the allocations as provided for in paragraphs 1 and 5 thereof; and

(3) The Court finds that there is no just reason for delay and directs that judgment be entered pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Honorable Charles R. Weiner
United States District Judge

Dated: December 15, 1986.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master Docket No. 4-82-874 M.D.L. 517

NOTICE OF APPEAL

Harris Trust and Savings Bank, as Trustee of the Convertible Fund of Trust for Collective Investment of Employee Benefit Accounts, and as a member of Subclass IV, by its attorneys, appeals to the United States Court of Appeals for the Eighth Circuit from the Order and Judgment Approving an Amendment to the Sharing Agreement Concerning Subclass IV dated December 15, 1986, and filed on December 19, 1986.

DOHERTY, RUMBLE & BUTLER
PROFESSIONAL ASSOCIATION

By_____
Alan I. Silver
Attorney Registration No. 101023

1500 East First National Bank Bldg.
Saint Paul, Minnesota 55101
Telephone: (612) 291-9333

Raymond A. Fylstra
James F. Gebhart
CHAPMAN AND CUTLER
111 West Monroe Street
Chicago, Illinois 60603
Telephone: (312) 845-3000

Attorneys for Harris Trust and Savings Bank

FILED Jan 14 1987

JUDGMENT ENTERED 12-19-86

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master Docket No. 4-82-874 M.D.L. No. 517 Honorable Charles R. Weiner

NOTICE OF HEARING ON PARTIAL SETTLEMENT

TO: All MEMBERS OF THE CLASS

You were previously notified of the pendency of this litigation on or about May 31, 1983, and also of partial settlements with certain defendants, most recently Drexel Burnham Lambert Incorporated and Moseley, Hallgarten, Estabrook & Weeden Inc. on or about May 31, 1984. The purpose of this notice is to inform you that a partial settlement has been agreed upon by the Claimants' Committee and with an additional defendant, subject to the approval of this Court, which would conclude this litigation as to that defendant. A hearing will be held before this Court to determine whether or not the proposed partial settlement will be approved.

As you were previously informed, this litigation involves claims under the federal securities laws and other statutes and under the common law against Flight Transportation Corporation ("FTC") and other defendants arising out of the offer and sale of FTC securities during the period November 30, 1979, through June 18, 1982. The Court has made no determination with respect to the merits of any of the claims or defenses in this litigation.

Agreement has been reached on a proposed partial settlement of this litigation between counsel for the Claimants' Committee and counsel for defendant Reavis &

McGrath, a law firm which was counsel to the underwriters for the three public securities offerings of FTC in March 1981 and June 1982. Reavis & McGrath specifically disclaims any liability relating to any of the matters alleged in this litigation and expressly denies that it has engaged in any wrongful activity or violated any law or regulation or that any person has suffered any harm or damage as a result of the matters alleged as to it.

The terms and conditions of the proposed partial settlement are set forth in a Settlement Agreement, dated January 14, 1985, a copy of which is on file with the Clerk of this Court. There follows a brief summary of the terms and conditions of the Settlement Agreement, which is subject to the approval of the Court:

1. Reavis & McGrath has placed in escrow the sum of $1,600,000 which sum has been placed in an interest-bearing account pending final approval of the proposed settlement. Provided that this proposed settlement is approved (a) the $1,600,000 plus all accrued interest thereon will be contributed to a central fund for payment of claims of Class members and creditors of FTC, in accordance with the Sharing Agreement entered into by the members of the Plaintiff Class and Plaintiff Subclasses, the receiver of FTC and certain general creditors of FTC approved by the Court in July, 1983, as modified by the Eighth Circuit; and (b) all claims which have been or could have been asserted in this litigation against Reavis & McGrath will be dismissed on the merits and with prejudice. Upon the Court's approval of the proposed settlement, and when such approval shall become final as defined in the Settlement Agreement dated January 14, 1985, on file with the Court, Reavis & McGrath, its partners, associates and agents, past and present, shall without further act by any person be released from, and each and every member of the Class shall be permanently barred and enjoined from instituting or prosecuting, any claim, demand, right or cause of action arising out of or relating to any of the acts, omissions or

other matters that were asserted or could have been asserted against Reavis & McGrath in this litigation or in any other litigation arising out of or relating to FTC.

2. The litigation will continue against the non-settling defendants herein.

3. Reavis & McGrath, its partners, associates and agents, past and present, will be indemnified with respect to judgments against them by parties to this action subject to the terms and conditions more fully set forth in the Settlement Agreement.

4. If this proposed settlement is not finally approved by the Court, the funds held in escrow pursuant to the Settlement Agreement will be returned to Reavis & McGrath and the litigation will proceed as if no settlement has been proposed.

A hearing shall be held before the Court at 11:00 a.m. C.D.T. on _____, 1985, in the United States Courthouse, Courtroom No. 2, 110 South Fourth Street, Minneapolis, Minnesota 55401, for the purpose of determining whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court.

Any member of the Class who objects to the approval of the proposed settlement may appear at the hearing and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon in accordance with the Settlement Agreement dismissing this litigation on the merits and with prejudice as to Reavis & McGrath; *provided however*, that a member of the Class may only contest the approval of the proposed settlement if his objection is submitted in writing and filed with the Court postmarked not later than _____, 1985, showing thereon delivery of a copy of such written objection to, Joan M. Hall, Esquire, Jenner & Block, One IBM Plaza, Chicago, Illinois 60611, attorneys for Reavis & McGrath, and Karl Cambronne, Esquire, Chestnut & Brooks, P.A.,

900 Norwest Midland Building, Minneapolis, Minnesota 55401, attorneys for the Claimants.

No members of the Class shall be entitled in any way to contest the approval of the terms and conditions of the proposed settlement, or, if approved, the judgment to be entered thereon pursuant to the Settlement Agreement, unless he has served and filed written objections in accordance with the preceding paragraph. Any member of the Class who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any objections except upon permission of the Court for good cause shown.

In the event that the hearing on this partial settlement on _____, 1985, does not resolve all questions or objections, the Court may order further proceedings to be held. No further notice will be sent to members of the Class regarding any such continuations of the hearing or related proceedings.

If you approve of the settlement, you need take no further action at this time.

If you have any questions concerning this notice, you may contact in writing the Clerk of the Court, United States District Court, District of Minnesota, P. O. Box 9837, Minneapolis, Minnesota 55440.

All papers filed in this action are available for inspection at the office of the Clerk of the Court.

DATED: Minneapolis, Minnesota
_____, 1985

Charles R. Weiner
United States District Judge
United States District Court
District of Minnesota

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: FLIGHT TRANSPORTATION CORPORATION SECURITIES LITIGATION	Master Docket No. 4-82-874 M.D.L. 517 Honorable Charles R. Weiner

NOTICE OF HEARING ON PARTIAL SETTLEMENT

TO: ALL MEMBERS OF THE CLASS

You were previously notified of the pendency of this litigation on or about May 31, 1983, and also of partial settlements with certain defendants. The purpose of this notice is to inform you that a partial settlement has been agreed upon by the Claimants' Committee with an additional defendant, subject to the approval of this Court, which would conclude this litigation as to that defendant. A hearing will be held before this Court to determine whether or not the proposed partial settlement will be approved.

As you were previously informed, this litigation involved claims under the federal securities laws, other statutes and under the common law against Flight Transportation Corporation ("FTC") and other defendants arising out of the offer and sale of FTC securities during the period November 30, 1979, through June 18, 1982. The Court has made no determination with respect to the merits of any of the claims or defenses in this litigation.

Agreement has been reached on a proposed partial settlement of this litigation between counsel for Claimants' Committee and counsel for defendants Fox & Company, John E. Harrington ("Harrington"), Norman E. Klein ("Klein"), and Mark Mersman ("Mersman") (and all present and former partners, employees and agents)

(collectively "Fox"). Fox is an accounting firm that audited the financial statements of FTC for its fiscal years ending June 30, 1980 and 1981, and provided unqualified opinions that the company's financial records fairly presented the company's financial condition in accordance with generally accepted accounting principles. These opinions appeared in the prospectuses for the three public securities offerings of FTC in March 1981 and June 1982. Fox specifically disclaims any liability relating to any of the matters alleged in this litigation and expressly denies that it has engaged in any wrongful activity or violated any law or regulation or that any person has suffered any harm or damage as a result of the matters alleged as to it.

The terms and conditions of the proposed partial settlement are set forth in the actual Settlement Agreement, a copy of which is on file with the Clerk of this Court. There follows a brief summary of the terms and conditions of the Settlement Agreement, which is subject to the approval of the Court:

1. Fox has placed in an interest-bearing escrow account the sum of $5,200,000.00 pending final approval of the proposed settlement. Provided that this proposed settlement is approved, (a) the $5,200,000.00 plus all accrued interest thereon will be contributed to a central fund for payment of claims of the Class members and creditors of FTC, in accordance with the Sharing Agreement entered into by the members of the Plaintiff Class and Plaintiff Subclasses, the receiver of FTC and participating creditors of FTC ("Settling Claimants") approved by the Court in July 1983, as modified by the Eighth Circuit; and (b) all claims which have been or could have been asserted in this litigation by Settling Claimants against Fox will be dismissed on the merits and with prejudice. Upon the Court's entry of the Order and Judgment approving the Fox Settlement, Fox, its partners, employees and agents, past, present, and future, shall, without further act by any person, be released from, and each and every member of

the Class and the Settling Claimants shall be permanently barred and enjoined from instituting or prosecuting, any claim, demand, right or cause of action arising out of or relating to any of the acts, omissions or other matters that were asserted or could have been asserted against Fox in this litigation or in any other litigation arising out of or relating to FTC.

2. The litigation will continue against any non-settling defendants herein.

3. Fox, its partners, employees and agents, past, present, and future, will be indemnified with respect to claims against them by any person arising out of or relating to any transaction or occurrence involving FTC and Fox as more fully set forth in the Settlement Agreement.

4. If this proposed settlement is not finally approved by the Court, the funds held in escrow pursuant to the Settlement Agreement will be returned to Fox, and the litigation will proceed as if no settlement had been proposed.

A hearing shall be held before the Court at 10:00 a.m. C.D.T. on September 13, 1985, in the United States Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401, for the purpose of determing whether the proposed settlement is fair, reasonable and adequate and should be approved by the Court.

Any member of the Class who objects to the approval of the proposed settlement may appear at the hearing and show cause, if any he has, why the proposed settlement should not be approved as fair, reasonable and adequate and why a judgment should not be entered thereon in accordance with the Settlement Agreement dismissing this litigation on the merits and with prejudice as to Fox; *provided however,* that a member of the Class may only contest the approval of the proposed settlement if his objection is submitted in writing and filed with the Court postmarked no later than August 30, 1985, show-

ing thereon delivery of copy of such written objection to Edward M. Glennon, Esquire, Lindquist & Vennum, 4200 IDS Center, Minneapolis, Minnesota 55402, attorneys for Fox, and Jack L. Chestnut, Esquire, and John Cochrane, Esquire, c/o Chestnut & Brooks, P.A. 900 Norwest Midland Bank Building, Minneapolis, Minnesota 55401, attorneys for the Claimants.

No member of the Class shall be entitled in any way to contest the approval of the terms and conditions of the proposed settlement, or, if approved, the judgment to be entered thereon pursuant to the Settlement Agreement, unless he has served and filed written objections in accordance with the preceding paragraph. Any member of the Class who fails to object in the manner prescribed shall be deemed to have waived, and shall be foreclosed forever from raising, any objections except upon permission of the Court for good cause shown.

In the event that the hearing on this partial settlement on September 13, 1985, does not resolve all questions or objections, the Court may order further proceedings to be held. No further notice will be sent to members of the Class regarding any such continuations of the hearing or related proceedings.

If you approve of the settlement, you need take no further action at this time.

If you have any questions concerning this notice, you may contact in writing Karl Cambronne, Chestnut & Brooks, P.A., 900 Norwest Midland Bank Building, Minneapolis, Minnesota 55401.

All papers filed in this action are available for inspection at the office of the Clerk of the Court.

U. S. COURT OF APPEALS - EIGHTH CIRCUIT
APPELLANT'S FORM A
Appeal Information Form
To be filed with the Notice of Appeal

RAYMOND A. FYLSTRA
JAMES F. GEBHART
MAUREEN W. FAIRCHILD
CHAPMAN AND CUTLER
111 West Monroe Street
Chicago, Illinois 60603
(312) 845-3750

ALAN I. SILVER
DONALD W. NILES
DOHERTY, RUMBLE & BUTLER
1500 E. First National Bank
Saint Paul, Minnesota 5510
(612) 291-9333

HARRIS TRUST AND SAVINGS BANK
Appellant/Appellee,

vs.

FOX AND COMPANY, REAVIS & MCGRATH, ET. AL.
Appellant/Appellee.

DATE OF DISTRICT
COURT JUDGMENT: December 19, 1986

BASIS OF:
DISTRICT COURT JURISDICTION: 28 U.S.C. §1332
APPELLATE JURISDICTION: 28 U.S.C. §1291

IS THIS CASE SUITABLE FOR CONSIDERATION IN THIS COURT'S SETTLEMENT PROGRAM?

(x) Yes. ( ) No. If no, state why:

APPROPRIATE STANDARD OF APPELATE REVIEW:
ERROR OF LAW: DE NOVO REVIEW

LIST ISSUES ON APPEAL: (List below and if necessary attach supplementary page.)

Optional–Include citations for each issue and in jury cases attach challenged instructions and trial memoranda.

DOES THIS CONSTITUTE YOUR STATEMENT OF ISSUES UNDER FRAP 10(b) (3)? (x)Yes. ( )No.

WHETHER a District Court can properly approve a settlement over the objections of class members, which requires the parties to dismiss a pending Petition for Writ of Certiorari in the United States Supreme Court concerning the adequacy, fairness and reasonableness of a prior settlement?

WHETHER a District Court can properly approve a settlement which imposes financial obligations upon absent class members without adequate notice and an opportunity to be heard?

Submitted by: _____
Signature

United States Court of Appeals

For The Eighth Circuit

No. 87-5075MN

Harris Trust and Savings Bank,
Appellant,

vs.

Thomas C. Bartsh, etc., et al.,
Appellees.

Appeal from the United States District Court for the District of Minnesota

Appellant Harris Trust and Savings' motion for a stay is denied. Appellant's brief is due April 10, 1987.

March 19, 1987

Order Entered Under Rule 5(a):

Clerk, U. S. Court of Appeals, Eighth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

In re: Flight Transportation Corporation Securities Litigation	No. 87-5075-MN **MOTION TO STAY APPEAL**

NOW COMES the Appellant, Harris Trust & Savings Bank ("Harris Trust"), by and through it's attorneys, and moves this Honorable Court pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure for the United States Court of Appeals and Rules 4 and 9 of the Eight Circuit Rules of Appellate Procedure, to stay this appeal pending resolution of a Petition for Certiorari in the United States Supreme Court which is related to the issues presented in this appeal. In support of its motion, Harris Trust respectfully states as follows:

1. On January 14, 1987, Harris Trust, filed a notice of appeal from the order dated December 15, 1986 which was by the Honorable Charles R. Weiner in these class action proceedings. Pursuant to order of this Court, Harris Trust's brief as appellant herein, is due on or before March 23, 1987.

2. Harris Trust appealed from the December 15, 1986 Order entered by Judge Weiner because, in part, it approved an amendment of a class action settlement which provided that Subclass IV (of which Harris Trust is a member) agree to voluntarily dismiss a petition for Certiorari which is currently pending in the United States Supreme Court. *(See, e.g., Subclass IV (Unitholders) v. Fox & Company, Reavis & McGrath, et al.* Case no. 86-715, currently pending in the United States Supreme Court).

3. On February 12, 1987, Harris Trust filed a supplemental Brief in support of the pending Petition for Certiorari which was previously filed by its Subclass IV Representatives. Harris Trust believes that the United States Supreme Court should be given the opportunity to

rule upon the Petition for Certiorari on the merits.

4. The Respondents are currently scheduled to file their response to the pending Petition for Certiorari on or before March 27, 1987. Accordingly, the Petition for Certiorari should be ruled upon on the merits by the United States Supreme Court within the next few months.

5. The resolution of the pending Petition for Certiorari may resolve some of the issues presented in the appeal.

6. Accordingly, Harris Trust requests that this Court stay this appeal pending resolution of the Petition for Certiorari in the United States Supreme Court.

Respectfully submitted,

Dated: March 16, 1987 HARRIS TRUST & SAVINGS BANK

By: _____
One of its attorneys

RAYMOND A. FYSLTRA, ESQ.
MAUREEN W. FAIRCHILD, ESQ.
CHAPMAN AND CUTLER
111 West Monroe Street
Chicago, Illinois 60603
(312) 845-3000

ALAN I. SILVER, ESQ.
DONALD W. NILES, ESQ
DOHERTY, RUMBLE & BUTLER
PROFESSIONAL ASSOCIATION
1500 East First National Bank Bldg.
Saint Paul, Minnesota 55101
(612) 291-9333

Of Counsel:

RICHARD A. MAREK, ESQ.
HARRIS TRUST & SAVINGS BANK
111 West Monroe Street
Chicago, Illinois 60603
(312) 461-5164

RESNICK & BARTSH
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

510 LUMBER EXCHANGE BUILDING
TEN SOUTH FIFTH STREET
MINNEAPOLIS, MINNESOTA 55402
(612) 339-0411

February 26, 1987

THOMAS C. BARTSH
PHILLIP S. RESNICK
STEPHEN D. GARRISON
ROBERT B. PATTERSON, JR.
BRIAN W. RUDE

JAMES C. DIRACLES ESQ.
Best & Flanagan
3500 IDS Center
Minneapolis, Minnesota 55402

Re: Flight Transportation Corporation Amendment to Sharing Agreement Concerning Subclass IV By and Among Claimants

Dear Mr. Diracles:

This letter is to confirm that the Plaintiffs' Steering Committee and myself agree that the period for receiving "FINAL APPROVAL" for the Amendment to the Sharing Agreement pursuant to paragraph 6 of said Amendment shall be extended from February 28, 1987, until April 30, 1987. I have not polled the Creditors since the Amendment to the Sharing Agreement affecting them has been approved, and is Final. They will be paid on March 2, 1987. They are thus, for all practical purposes done with the litigation.

It is my understanding that you are also in agreement to extend the time under which "FINAL APPROVAL" must be obtained for the Amendment to the Sharing

Agreement to April 30, 1987. Please sign the enclosed copy of this letter and return it to me indicating your agreement.

Sincerely,
RESNICK & BARTSH
Professional Association

Thomas C. Bartsh, As Receiver of
Flight Transportation Corporation
and On Behalf of the Plaintiffs'
Steering Committee

ON BEHALF OF SUBCLASS IV, I agree to amend Paragraph 6 of the Amendment to Sharing Agreement to extend the time under which "FINAL APPROVAL" may be obtained until April 30, 1987.

JAMES C. DIRACLES

cc: JACK CHESTNUT, Esq.
JEFF SMITH Esq.
JAMES SAFLEY, Esq.
EDWARD CALLAHAN, Esq.